

Russia – With Scepter and Corona

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This was the beginning of May, yet the weather was temperate, variable, and cool enough, and people had still some hopes.

"A Journal of the Plague Year" by Daniel Defoe

The number of infected people is [increasing rapidly](#) and the rates of Coronavirus are close within all the territory of the Russian Federation. According to the [official Russian statistics](#) (as of 22 May 2020) the COVID-19 situation is unsettling; the number of confirmed cases is 326,448 with the number of recovered at 99,825, and the total number of deaths is 3,249. (However, according to the [official information](#) published by the Public Health Department of Moscow (Mosgorzdrav), the applied method to calculate the mortality rate does not account for the deaths of more than 60% of COVID-19 patients who had comorbidities or other causes of death). Each day nearly 9,000 new cases are registered.

Since the first cases of COVID-19 were registered in Zabaikalsky kray and Tumenskaya oblast on 31 January 2020, the Russian government has reacted to the challenge of the epidemic by enacting new legislation and introducing some emergency measures. The pandemic is bringing new and unpleasant surprises, creating specific social, economic and legal hardships which is making the unstable life of Russian citizens even worse.

Russian legislation contains several regimes for the government reaction to challenges in such extreme situations as a pandemic. Special legal regimes are conditionally differentiated depending on the scale, nature and consequences of emergencies or threats, on the level of human rights restrictions and on the degree of the government's responsibility.

Quarantined Constitutionalism

The Russian [Constitution](#) 1993 mentions only one of the existing measures of action: the *State of Emergency*(SE). According to Art. 56 of the Constitution, a SE either in the whole territory of Russia or certain parts of it, can be imposed only on grounds of the Federal Constitutional Law (FCLaw) provisions which in turn define the permitted limitations to human rights and freedoms, establish their framework, and the time periods for the SE. In any case, absolute human rights, (including the rights to life and to dignity, the rights to the inviolability of private life and to privacy, freedom of conscience and religion, the right to free entrepreneurial and economic activities, the right to a home, right to access to justice, the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law, the right to qualified legal assistance, right to appeal, the right to state compensation for damages caused by unlawful action (inaction) of bodies of state authority and their officials, the [right against self-incrimination](#)), cannot be

limited due to the SE regime in accordance with Art. 56(3). The SE is imposed only by the Russian President's Decree (Art. 88). Furthermore, the Constitution 1993 settles that measures to combat epidemics are referred to shared powers of the Federation and the Subjects of Federation (Regions) in accordance with Art. 72(1).

Details of the SE regime and rules of its imposition are laid down in the [FCLaw "On the State of Emergency"](#) 2001. It prescribes clear mandatory provisions concerning implemented measures, the limits of human rights restrictions and the government's responsibility for its actions. However, Russian authorities have never applied the provisions of this FCLaw, and the SE has not been imposed across Russia since 1993.

The SE regime may be imposed only on the ground of the *Emergency Situation Mode* (ESM) announcement according to the provisions of the [Federal Law "On protection of population and territories from natural and man-made emergencies"](#) 1994. Following its legal definition, the Emergency Situation can be proclaimed in the case of spreading disease, "which can lead or has already exacted a heavy human toll, health detriment or environment, significant material loss, Infringement of living conditions of people". The announcement of an Emergency Situation does not automatically lead to the imposition of the SE.

In practice, the ESM had been announced in various regions of Russia several times before. As a particular example, in August 2010 it was [adopted](#) in seven regions of Russia due to forest fires. In June 2014, the EMS was introduced in the Rostov oblast due to the influx of refugees from Eastern Ukraine. Also, in April 2016, the EMS was proclaimed throughout Russia in connection with serious floods and fires.

However, in the spreading situation of coronavirus, the EMS was not announced within the whole territory of the country. Urgent amendments to the 1994 Law on natural and man-made emergencies were made at the end of March 2020, and numerous gaps in law (for example, uncertainty in the content of the preparatory measures to announce the ESM; uncertainty in the correlation between emergency and quarantine measures; and the lack of a clear regional authorities competency framework for quarantine measures) has enabled a shift of responsibility for the consequences of the emergency situation from the President and his Administration, to the Federal Government and regional authorities.

Federal Responsibility: "How to Wash your Hands [of Responsibility]"

Presidential Decrees (based on Art. 90 of the 1993 Constitution and adopted on [25 March](#) and [2 April](#) 2020) define all April days as "non-working" (a term previously unknown in legislation) for citizens and legal entities (though with several exceptions such as pharmaceutical companies, pharmacies, and supermarkets) while maintaining wages at the same time. The Decrees do not announce days off or holidays because only the State Duma has the prerogative, and the President is not empowered to do so.

While these measures can in fact contain the spread of the disease, the “non-working” days are taken at the employers’ expense, increasing their losses in the period of wider shortages in terms of human resources and commodities in the private sector. Most commercial activity has been suspended, shops and restaurants were closed, schools and universities were transferred to distance learning.

[On March 31](#), the State Duma adopted the new amendments which extend the Government’s powers to introduce the *High Alert Mode* (HAM) or the ESM within the territory of Russia. This legal measure introduced additional regulations on the circulation of the most important drugs, and also established a special simplified procedure for their registration, in order to stimulate pharmaceutical business. According to the [Government Order](#), strong crossing restrictions have also been introduced across the borders of Russia.

Supportive measures adopted include repayment for any holidays taken because of COVID-19, but only if a person’s income over the past month has decreased by 30%. Several amendments to the social law (including sickness payments, and payments to families with children) were contemplated as the “set” of federal support measures. For small and medium-sized businesses support is provided in the form of delaying of tax payments, temporary exemption from payments for leasing federal property, and [state security of loans for salaries](#). The sunset clause for the adopted measures was designated initially till April 4 and extended twice till April 30 and till May 11. Supportive measures have been [extended](#) further until Autumn 2020.

The actions of government are obscure from a legal point of view. The State is struggling to provide helpful measures, but with a minimum of expense and loss to the federal budget. As a result, supportive measures in Russia exist, but with several pitfalls – albeit, with a wide [mandate delegated](#) to the Russian regions.

Regional “Virus-sovereignty” Index

Demarcation of powers between the Federal government and Regional government is not clear. Regional governments have taken their time to announce the ESM and limited themselves to taking preventive measures within the scope of the HAM regime, as a part of preparation for Emergency Situations under Art. 4.1(6) of the Law 1994. In fact, the EMS due to the coronavirus epidemic was announced only [in the Zabaikalsk village](#) on the border with China at the very beginning of the epidemic in Russia.

The HAM can stipulate that restrictions to human rights should be defined on the ground of [sanitary well-being norms](#) according to the Federal Law “On Sanitary and Epidemiological Well-Being of the Population” 1999. It presumes to enforce a *quarantine* by the prescription of the Russian Chief Sanitary Inspector within the territory of Russia or its part. However, the regional authorities preferred to selectively apply these provisions concerning a quarantine, although the Chief Sanitary Inspector ordered the general instructions in mid-March 2020. Because of this, only persons who are infected or suspected of being infected with coronavirus are put under quarantine by an individual order of a medical official. For other people

within the framework of the HAM, the regional authorities imposed a so-called *self-isolation* that is not provided in the Federal Law. In practice, however, self-isolation is softer than quarantine as it allows people to leave their homes in some cases, for example for the nearest grocery, pharmacy, etc.

In Moscow, the HAM was proclaimed by the Mayor's [Decree](#) of March 5. It introduced rules of conduct for the population and organizations, including the requirement for those who came from countries with an unfavourable COVID-19 situation to isolate themselves at home for two weeks. Following Moscow and the Moscow region, authorities of 49 (of 85) Russian regions announced similar self-isolation regimes due to COVID-19.

QR-Code: How is Big Brother going to watch you?

On 15 April, a system of so-called “digital passes” was introduced in Moscow by special Mayor's [Decree](#) of April 11. Citizens are required to carry a digital pass (printed or on a smartphone screen QR-code) if they move around Moscow by personal or public transport. A digital pass is an alphanumeric code of 16 characters that allows to identify the owner and the purpose of the trip. Digital passes can be issued by the Moscow government through its official Internet-portal on the basis of different prescribed reasons: a work trip; a visit to a medical organization; personal travel (for allowed particular goals, e.g. to the nursery or the nearest shop) and traveling with official ID (for attorneys, military servants, etc). When walking on foot, a pass is not required.

On April 22, the Moscow Mayor [Sergei Sobyanin proposed](#) to extend the system of digital passes throughout the country. In his opinion, it is necessary to control the movement of citizens from one region to another. Following Moscow's experience, several subjects adopted similar practices (Kostroma, Tula, Tambov, Yaroslavl, Vladimir, Belgorod and Oryol regions).

Furthermore, it is not obvious how to implement these different types of control taking into account the unclear provisions for it within the framework of HAM or its absence altogether from the law. Digital passes affect fundamental rights and freedoms, *inter alia*, the right to privacy and the freedom of movement. However, can the requirement to get a digital pass be considered as a limitation of the mentioned rights? In practice, it impedes their exercise. In particular, the scope of digital pass obtaining presents ostensible conflict with Art. 27 of the Russian Constitution which grants the freedom of movement. However, this constitutional freedom was “limited” due to the COVID-19 disease in several regions with various methods, including electronic tools, but not on the basis of the Federal Law, as prescribed in the Art. 55 of the Russian Constitution.

CONVICTED to Self-Isolation

In order to comply with the new restrictions (especially, related to the freedom of movement) additional measures imposing administrative and criminal liability

were adopted. Serious administrative forfeitures were imposed for violation of sanitary rules during the quarantine. In particular, any threat of a disease spreading that poses a danger to others during the implementation of restrictive measures (quarantine) in the relevant territory [will lead](#) to a monetary penalty of 15,000 – 40,000 rub for individuals and 200,000 – 500,000 rub for legal entities. Stricter punishment for non-compliance (including more severe financial penalties, forced labour, and imprisonment) is established by the Russian Criminal Code ([Art. 236](#)).

As a general rule, the police are empowered to check IDs. This is an extremely controversial measure when self-isolation is supposed to be voluntary, but can nevertheless be subject to a penalty for violation.

The Criminal Code is supplemented by new articles (Arts. [207.1](#), [207.2](#)) which introduce liability for spreading fake news related to emergencies. An increase in legal liability also touched on the sales of medicines: violation of price regulations now carries substantial penalties.

Sanitizer for Femida

According to the Russian Supreme Court Presidium's Rulings on 19 March 2020, the Russian courts should consider only categories of cases of an urgent nature (for example, on the preventive measure extension). Courts will continue to issue orders, [while also](#) hearing cases in summary proceedings. The personal representation of citizens is suspended in courts. Documents to courts are recommended to be submitted electronically. For persons who are not participants in the proceedings, access to the courts is limited. This mode of operation has been [extended](#) twice – first until April 30 and then until [11 May](#). All Russian courts returned to their normal work regime on 12 May.

Additionally, on 21 April 2020 the Russian Supreme Court published [Review](#) No 1 on a judicial practice concerning the application of COVID-19 legislation. This Review is intended to explain some complex questions in various branches of legislation. First, the Supreme Court paid special attention to the “non-working days” definition in the light of the President's Decrees. It spells out that “non-working” days for terms of obligations' fulfilment and procedural periods are necessary to determine as the “working days” according to the current Russian legislation. Secondly, the Supreme Court points out that, generally, it will consider the pandemic as *casus fortuitus*. This exempts civil transactions counterparts from liability for the breach of obligations. Thirdly, in its Review, the Supreme Court prevents future attempts to contest the legality of acts adopted by the Regional authorities due to COVID-19. The Supreme Court presumes that all such acts comply with the Federal law and are mandatory for all persons and legal entities.

Conclusions

COVID-19 has become a serious test for the current Russian political and legal order. Although the Constitution and legislation in force provides for a number of

measures to respond to the challenges of the coronavirus epidemic, the Russian authorities preferred not to impose a strict legal framework with concrete provisions to restrict fundamental rights and hold the authorities accountable. The Federal authorities provided a minimal level of assistance to citizens and businesses and made all possible efforts to ensure that anti-coronavirus measures were implemented at the regional level. However, the regional authorities preferred not to introduce a quarantine according to the Federal law, but announced the preparatory High-Alert Regime on the basis of mass self-isolation of citizens that has no basis in the law as it stands. Moreover, the High-Alert Regime also provides for restrictions of citizens' rights, including the freedom of movement, as well as punishment for the violation of self-isolation. The courts and other law enforcement bodies function on an extraordinary basis which makes it difficult for citizens to correctly implement the measures and to challenge the acts of the authorities.

